

Serial No. 10/028,335
Docket No. 39672.0200**REMARKS**

Applicant hereby replies to the Office Action mailed on April 21, 2005, of which this Reply is filed within the two months. The application included claims 1, 3-6, 10, 12-13, 16, 23-28 and the Examiner rejects these claims.

Applicant thanks the Examiner for the courtesies extended during the Examiner interview on April 26, 2005. As suggested by the Examiner, upon entry of the foregoing amendments, Applicant amends independent claims 1, 16, and 23 to include non-obvious tangible objects, the multiple items that are added to the housing and used in the instruction, and the specific school skills.

35 U.S.C. § 112 Claim Rejections

The Examiner rejects claim 1 under 35 U.S.C. § 112. Regarding Claim 1, the Examiner claims that there is not disclosure of a housing including at least one different item related to each area of brain development. Applicant respectfully traverses and directs the Examiner to Figures 3A – 8 which each disclose many different items associated with different areas of the brain development. Touch, vision, play, sound, etc are extensively described as areas of brain development in the specification for example, paragraph 00127, which discloses:

obtaining at least one activity item which can be used by the caregiver during the play session to stimulate at least one predetermined aspect of brain development, where the predetermined aspect of brain development comprises security and emotional attachment, touch and sensory integration, vision and visual discrimination, play and playfulness, and sound and auditory discrimination; (emphasis added)

For example, hand games under touch (Fig. 3A), book under touch (Fig. 3A), activity mat under play (Fig. 3B), musical toys under sound (Fig. 3B), songs and nursery rhymes under sound (Fig. 3B), rattle under security (Fig. 4A), book under security (Fig. 4A), activity mat under security (Fig. 4A), book under touch (Fig. 4A), ball under touch (Fig. 4A), blocks under touch (Fig. 4A), scoop under touch (Fig. 4A), water under touch (Fig. 4A), beads under touch (Fig. 4A), puzzles under touch (Fig. 4A), treasure under touch (Fig. 4A), scissors under touch (Fig. 4A), writing instrument under touch (Fig. 4A), clothes under vision (Fig. 4B), books under vision (Fig. 4B), puzzles under vision (Fig. 4B), animals under vision (Fig. 4B), numbers under vision (Fig. 4B),

Serial No. 10/028,335
Docket No. 39672.0200

alphabet under vision (Fig. 4B), letters under vision (Fig. 4B), puppet under play (Fig. 4B), and CD under sound (Fig. 4B). Also note the "materials needed" section in Figures 5-8.

Regarding Claim 23, the Examiner asserts that the claim implies an actual item. Applicant respectfully traverses this rejection. However, to expedite prosecution of this application, Applicant amends the claim to clarify the subject matter. As such, this rejection is now moot.

The Examiner next rejects claim 1 under 35 U.S.C. § 112 because the claim includes "at least one different activity item". Applicant clarifies the claim by deleting the inconsistent terminology and incorporating "plurality of activity items". The Examiner next rejects claims 3, 13 and 27 under 35 U.S.C. § 112 because of antecedent basis issues. Applicant corrects the antecedent basis, so the rejections are now moot.

35 U.S.C. § 103 Claim Rejections

The Examiner next rejects claims 1, 3-6, 10, 12-13, 16 and 24-28 under 35 U.S.C. § 103(a) as being unpatentable over "Brilliant Beginnings Baby Brain Basics Birth to 12 months Parent Kit" in view of Werzberger '298. Applicant respectfully traverses these rejections.

As stated by the Examiner, Brilliant Beginnings does not disclose or suggest a complete method for "creating an activity card related to said activity item, said activity card having a first area that identifies said brain link and a second area that identifies said school link." As discussed, the claim does not simply relate to printed matter; rather, the claim encompasses numerous active steps from the manufacturer point of view.

Applicant asserts that the activity cards, which include the linkage between each of the items in the housing to the brain development and the future school skills, are critical to the claimed invention. Unlike existing toy boxes or instructions on how to use toys, the presently claimed invention indicates how the item is related to brain development and future school skills, which is a major motivator to caregivers to implement certain activities. Moreover, the brain development and future school skills provides scientific support for each activity such that the caregiver can justify the activities, instead of simply thinking of the activities as fun "games" to merely occupy time. Furthermore, caregivers looking to focus on certain school skills or certain areas of the brain will be aware of the particular activities to focus on. Thus, Applicant asserts that, in light of its amendments to independent claims 1 and 16 as well as dependent claims 3-6, 10 and 12-13, Examiner's rejection is now moot.

Serial No. 10/028,335
Docket No. 39672.0200

The Examiner next rejects claim 23 under 35 U.S.C. § 103(a) as being unpatentable over Cohen '658 in view of "Brilliant Beginnings." Applicant respectfully traverses this rejection. To expedite prosecution, Applicant respectfully submits amended independent claim 23 is differentiated from the cited references for the same reasons as set forth above.

Commercial Success

The Examiner asserts that the affidavits are insufficient because the affidavits do not provide a nexus between the claimed product and commercial success. As discussed in the Examiner interview, Applicant asserts that the affidavits include identical claim language and statements about commercial success based on the claimed language.

Accordingly, Applicant respectfully submits that the pending claims are in condition for allowance. No new matter is added in this Response. Reconsideration of the application is thus requested. The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. 19-2814. A duplicate copy of this sheet is enclosed. Applicant invites the Office to telephone the undersigned if the Examiner has any questions regarding this Response or the present application in general.

Respectfully submitted,



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